

The Examiner has restricted the invention under 35 U.S.C. §121 into the following groups:

- I. Claims 1-30, drawn to a method of reducing blood flow to a perigraft space, classified in class 128/898.
- II. Claims 31-55, drawn to a delivery device system, classified in class 604, subclass 19.

Applicants provisionally elect to prosecute Group II, claims 31-55, with traverse.

The Examiner has stated that the inventions are distinct, each from the other because inventions I and II are related, as product and process of use. The Examiner, however, does not specifically allege why the species are patentably distinct.

Applicants' acknowledge that under MPEP, §806.05(h) that inventions are distinct if the following can be shown:

- (1) that the process of using as claimed can be practiced with another materially different product, or
- (2) the product as claimed can be used in a materially different process.

The Examiner has not, however, specifically alleged why the inventions are distinct. According to MPEP 803, the restriction is proper only if the claims are able to support separate patents and they are either independent or distinct (806.05-806.05(h)). Section 803 also states that even if distinct or independent claims exist, examination on the merits is required providing the search can be made without serious burden.

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In the instant case, it is apparent from a thorough reading of the specification and the claims that the methods and systems of Groups I and II are one invention in this application. References which disclose the method of Group I would clearly be cited as prior art against those which disclose the system of Group II. The Examiner would certainly feel obligated to consider such disclosure relevant and would not hesitate to cite references relating to one group against the other under 35 U.S.C. §103. For those reasons, Applicants maintain that a co-extensive field of search seems virtually mandated and would not present an undue burden.

Furthermore, the mere fact that of separate classifications is not determinative of a proper restriction. Separate classification is mere a patent office convenience for the purpose of locating pertinent art. It is clear, therefore, that although diversity of classification may be the considered factor in a decision to make a restriction requirement, it should not be a controlling one. The Examiner may not properly rely on separate classifications to support an allegation of separate status in the art. The Examiner has also not made any further allegations as to why this restriction is proper.

For the reasons set forth above, Applicants respectfully request that the requirement for restriction to be withdrawn and consideration of all the claims on the merits be commenced.

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Furthermore, the Examiner alleges that the claims are directed towards the following distinct species:

Method of Delivery:

- a. Translumbar injection
- b. Endoluminally

Delivery Device:

- c. Catheter
- d. Needle/syringe

Buffer:

- e. Glycylglycine
- f. HEPES

For the method of delivery, Applicants provisionally elect species "b", i.e., endoluminally. For the delivery device, Applicants provisionally elect species "c", i.e., catheter. For the buffer, Applicants provisionally elect species "e", i.e., glycylglycine.

Applicants respectfully submit that claims 31-33, 35-38, 40-46 and 48-54 read on Species "b", "c" and "e" as defined by the Examiner of Group II with claims 31 and 45 being generic within this group.

Furthermore, Applicants respectfully submit that any of the claims 31-55 that are directed to a non-elected species depend from the generic claims 31 and 45. Upon indication of allowance of the generic claims, Applicants respectfully request allowance of the claims directed towards the non-elected species.

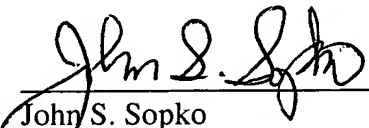
The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of

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time, if any, under 37 C.F.R § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Should the Examiner have any questions, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number set forth below.

Respectfully submitted,



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